Julia Calvert, *The Politics of Investment Treaties in Latin America* (Oxford University Press, 2022).

Julia Calvert's *The Politics of Investment Treaties in Latin America* forms part of a wider strand of scholarship that explains why states act as they do with regard to the protection of foreign investors under International Investment Agreements (IIAs) and Investor State Dispute Settlement (ISDS). Calvert's book asks two main research questions: (1) Why do some governments infringe on IIAs despite the costs of doing so? and (2) Why do some governments, after being targeted by investors' claims, choose to reform their IIA obligations, while others do not? Calvert establishes that infringement of IIAs occurs when a government introduces or amends a new or existing law, policy, or regulation that violates the substantive rights of an investment treaty either knowingly (intentional infringement) or unknowingly (unintentional infringement). The main contribution of the book is to show that "programmatic beliefs—and, in particular, normative ideas—shape the propensity of governments to infringe on and reform their IIA commitments" (23). The book provides an overview of the history of investment treaties in Latin America and applies its theoretical framework to three case studies: Argentina, Ecuador, and Peru.

Argentina's case study is conceptualized as one of pragmatic opposition. Through analysis of the string of cases that arose from the measures adopted by Argentina in the wake of the financial crisis of 1999–2001, Calvert shows the somewhat contradictory response of Argentina's government to ISDS cases. Emergency measures led to forty-seven claims against Argentina in the areas of gas, transportation, electricity, water and wastewater services, finance, and insurance (all examples of intentional infringement). Many claims were settled, and twenty-two claims proceeded to the merits phase where the necessity defense was interpreted inconsistently by arbitral tribunals. Argentina's response to this string of cases was ambivalent: While the government refused to pay many awards, it did not see the awards as a challenge to core policies, nor did it withdraw from the International Centre for Settlement of Investment Disputes (ICSID) given that state officials believed that IIAs had a positive impact on investment flows (110).

Ecuador, in turn, exemplifies a case of paradigmatic change. Calvert traces infringement and reform processes to the programmatic beliefs of the Correa administration, which sought to implement "buen vivir" and place social objectives above the profits of corporate actors. Policymakers interpreted their experience under IIAs as confirming their beliefs in the need to shield domestic interests from the conditions of a global capitalist system dominated by capital-exporting countries. Calvert argues that because policymakers operated under this normative frame, arbitral losses were perceived to reflect corporate bias against IIAs and their enforcement was perceived as a threat to government's policy goals even though Ecuador had won many ISDS cases. Officials' views and programmatic beliefs shaped reform preferences, leading Ecuador to withdraw from ICSID and IIAs.

The book's final case study, Peru, is one of reluctant reform. Technocrats and economic elites in Peru viewed IIAs and ISDS as necessary interventions, and they interpreted Peru's experience with ISDS in a way that reinforced these beliefs. As Calvert points out, Peru has attracted FDI and has, on balance, won more than it has lost in arbitral proceedings. Hence, for Peru, the investment treaty system seems to be working.

Calvert's arguments are well researched and convincing but this important contribution to the literature raises questions on the interplay between domestic law and ISDS. Two key cases discussed in the Ecuadorian and Peruvian chapters relate to the mining industry and therefore represent a good point of comparison: *Copper Mesa Mining v. Ecuador*, PCA No. 2012-2, Award (March 15, 2016), and *Bear Creek v. Peru*, ICSID Case No. ARB/14/2, Award (November 30, 2017). According to Calvert, both are examples of "intentional infringement" of investment treaties by Ecuador and Peru, respectively. To Calvert, the two states' different responses to ISDS are explained by the programmatic beliefs of their respective administrations. I wonder, however, whether there is also something that makes these cases qualitatively different, that is, the interpretive frameworks of arbitral tribunals. In *Copper*, the tribunal found that Ecuador's actions (suspension of mining projects due to social conflict) were "arbitrary" because Ecuador was siding "completely with the anti-miners," making it impossible for Copper Mesa Mining to complete its environmental impact assessment. *Copper Mesa Mining*, at para. 6.83. However, Ecuador's mining law was reformed in 2009 to allow for the possibility of suspending mining projects in the face of social conflict. In *Copper Mesa Mining*, the arbitral tribunal chose to frame the interests of local communities as facts or politics. Had the tribunal analyzed domestic norms, the finding on arbitrariness would have been different and, arguably, no treaty breach would have been found.[1]

In the case of Peru, the domestic legal framework—unlike the Ecuadorian legal system—did not enable the state to revoke mining concessions in case of social conflict. Accordingly, the decision of the arbitral tribunal in *Bear Creek v. Peru* was aligned with the decision of domestic courts, which also found that the investor's rights had been breached. In this case the arbitral tribunal applied domestic law as the domestic court did. Could the arbitral tribunal's disregard for domestic norms in *Copper Mesa Mining v. Ecuador* make it qualitatively different from other cases, such as *Bear Creek*, used in the book? Could Ecuador have foreseen that an arbitral tribunal would declare a breach for following its own domestic norms, especially when other tribunals had not found breaches of the relevant treaty in similar circumstances?[2] What if an arbitral tribunal in a case won by Peru had similarly disregarded domestic law? Would Peruvian authorities reflect differently on their experience with ISDS? Is state reaction to ISDS affected not only by programmatic beliefs but also by the substantive legal analysis carried out by arbitral tribunals? While Calvert's theoretical framework provides valuable insights into investment treaty regimes in Latin America, the book leaves space for further analysis of the application of substantive domestic law in investment treaty arbitration.

Clara Lopez
Dickson Poon School of Law, King's College London
claram.lopez_rodriguez@kcl.ac.uk

[1] That the legal framework enabled Ecuador to suspend and cancel concessions lacking prior consultation was argued both by the claimant—referring to suspension—and the respondent—referring to cancellation. See *Copper Mesa Mining*, paras. 1.92, 6.32.

[2] See arguments on Fair and Equitable Treatment in South American Silver Limited (Bermuda) v. Bolivia, PCA Case No. 2013-15, Award (August 30, 2018), para. 658.